

REMARKS/ARGUMENTS

This Amendment and Response is responsive to the non-final Office action dated March 5, 2009, setting forth a shortened three-month statutory period for reply expiring on July 5, 2009. This response is timely submitted on July 2, 2009.

The Assignee thanks the Examiner for reviewing this application and issuing an Office action.

Prior to entry of this Amendment and Response, claims 6-12, 73 and 77-99 are pending in the application, with claims 6, 7, 9 and 73 being independent. By this Amendment, claims 100-140 are added. Accordingly, after entry of this Amendment and Response, claims 6-12, 73 and 77-140 will be pending, with claims 6, 7, 9 and 73 being independent.

I. Specification

In the Office action the disclosure is objected to because of informalities. By this Amendment, the Assignee has amended the specification to include specific language for the means-plus-function language used in the claims. The Assignee respectfully submits that one of ordinary skill in the art would have recognized the corresponding structures based on the specification as originally filed. Thus, the Assignee respectfully submits that no new matter is added by these changes to the specification.

II. Claim Objections

In the Office action claims 7-12 are objected to because of similar informalities. The Assignee respectfully submits that the changes to the specification made by this Amendment address the objections to the claims as well.

III. Rejection under 35 U.S.C. § 103(a)

The Office action rejects claims 6, 73, 78-82, and 84-99 under 35 U.S.C. § 103(a) over Taiwan Patent Publication No. 379572Y. The Assignee respectfully traverses this rejection for at least the following reasons.

The Assignee respectfully submits that the rejection based on Taiwan Patent Publication No. 379572Y is improper because no translation has been made of record. In accordance with

MPEP § 706.02 (II), “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying on in support of the rejection.” (emphasis added) In this case, the Office action clearly intends to rely on the document, as opposed to only an English abstract (which is also not of record).

Because no English translation has been made of record, the Assignee is unable to ascertain the basis for the assertions in the Office action regarding the disclosure of Taiwan Patent Publication No. 379572Y. As such, the Assignee respectfully submits that the Office action fails to provide a clear basis for its assertions. Therefore, the Assignee respectfully submits that this rejection based on Taiwan Patent Publication No. 379572Y is improper and should be withdrawn. Further, should this reference be applied along with an English translation to make a rejection in a subsequent Office action, the Assignee respectfully submits that such Office action should be non-final because the current rejection is not proper and fails to provide the Assignee with the opportunity to evaluate the assertions made with respect to the disclosure this reference.

The Assignee also respectfully submits that, even as asserted in the Office action, Taiwan Patent Publication No. 379572Y fails to teach or suggest every feature recited in the claims. As admitted in the Office action, Taiwan Patent Publication No. 379572Y fails to disclose the resistance being elastomere springs.

The Office action asserts that it would have been obvious to substitute elastomere springs for the resistance in Taiwan Patent Publication No. 379572Y. The Assignee respectfully disagrees.

Assuming that the Office action is correct (which is not conceded) in its assertion that Taiwan Patent Publication No. 379572Y discloses a resistance engine and an actuator attached thereto with the resistance engine providing a constant load to a user when the actuator is actuated, the Assignee respectfully submits that the modification proposed in the Office action would not have been obvious to one of ordinary skill in the art at the time of the invention and would not have achieve the invention as recited in independent claims 6 and 73.

Specifically, the proposed modification would not result in a resistance engine that provides a constant load to a user when the actuator is actuated. On the contrary, substituting elastomere springs in Taiwan Patent Publication No. 379572Y would result in the non-constant load provided by such springs. Therefore, even if modified as proposed in the Office action, all of the features recited in independent claims 6 and 73 would not be present.

Further, the Assignee respectfully submits that the modification proposed in the Office action would impermissibly change the principle of operation of Taiwan Patent Publication No. 379572Y, again assuming that the load provided in Taiwan Patent Publication No. 379572Y is constant (which is not conceded). As noted above, the proposed modification of Taiwan Patent Publication No. 379572Y would result in an exercise device that provides a non-constant load to the user. However, the Office action asserts that Taiwan Patent Publication No. 379572Y operates to provide a constant load. Thus, this principle of operation would be changed. According to MPEP § 2143.02 (VI), "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious."

The Assignee also respectfully submits that the modification proposed in the Office action would render the exercise device of Taiwan Patent Publication No. 379572Y unsatisfactory for its intended purpose, contrary to MPEP § 2143.02 (V), which states that "[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." Here, the intended purpose attributed to Taiwan Patent Publication No. 379572Y in the Office action is to provide an exercise device that provides a constant load to a user upon actuation of the actuator. This purpose would be destroyed by making the load provided to the user non-constant, which would result from elastomere springs being substituted for the resistance in Taiwan Patent Publication No. 379572Y.

Therefore, in view of the foregoing, the Assignee respectfully submits that the rejection of claims 6, 73, 78-82 and 84-99 over Taiwan Patent Publication No. 379572Y is improper and should be withdrawn.

The Office action also rejects claims 77 and 83 under 35 U.S.C. § 103(a) over Taiwan Patent Publication No. 379572Y as applied to claims 6 and 73 above further in view of U.S. Patent No. 5,145,479 to Olschansky et al. (Olschansky). The Assignee respectfully traverses this rejection for at least the foregoing reasons presented above. The Assignee respectfully submits that Olschansky does not remedy the deficiencies of the rejection of claims 6 and 73 discussed above. Therefore, the Assignee respectfully submits that this rejection of claims 77 and 83 over Taiwan Patent Publication No. 379572Y and Olschansky is also improper and should be withdrawn.

II. Allowable Subject Matter

The Assignee thanks the Examiner for indicating that claims 7-12 are allowable. As discussed above, the Assignee has amended the specification to address the objection thereto.

III. Conclusion

After entry of the above listing of claims and remarks, claims 6-12, 73 and 77-140 will be pending in the application. In accordance with the amendments and arguments set forth herein, the Assignee respectfully submits the application and all claims are in a condition for allowance, and requests such prompt allowance.

The Assignee believes no fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

Should any issues remain that the Examiner believes may be dealt with in a telephone conference, she is invited to contact the undersigned at the number below.

Respectfully submitted,

Date: July 2, 2009

By 
Klifton L. Kime, Attorney Reg. No. 42,733
DORSEY & WHITNEY LLP
370 Seventeenth Street, Suite 4700
Denver, Colorado 80202-5647
Tel.: (303) 629-3400
Fax: (303) 629-3450

USPTO Customer No.: 80705